

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Hydentra HLP Int. Limited,

10 Plaintiff,

11 v.

12 Porn69.org, et al.,

13 Defendants.  
14

No. CV-15-00451-PHX-DGC

**ORDER**

15 After the Clerk of the Court entered default against Defendants Tan Bao Anh  
16 Pham, Nguyen Le Tran, and Henry Jay (Doc. 30), Plaintiff Hydentra HLP Int. Limited  
17 (“Hydentra”) moved for default judgment. Doc. 34. The Court will grant the motion.

18 **I. Background.**

19 On March 12, 2015, Plaintiff initiated this action against a group of four  
20 pornographic websites (collectively “Porn69”), asserting claims for copyright  
21 infringement based on Porn69’s publication of certain videos copyrighted by Plaintiff.  
22 Doc. 1. Plaintiff filed a motion requesting leave to conduct discovery to determine the  
23 owners and operators of Porn69. Doc. 8. The Court granted the motion. Doc. 11.  
24 Thereafter, Plaintiff amended its complaint to add as Defendants the owners and  
25 operators of Porn69: Tan Bao Anh Pham, Nguyen Le Tran, and Henry Jay. Doc. 17.  
26 Defendant Tan Bao Anh Pham was personally served with the first amended complaint.  
27 Doc. 22. With leave of court, Plaintiff served Defendants Nguyen Le Tran and Henry Jay  
28 by email. Docs. 23, 26.

Defendants failed to appear after receiving service, and on January 21, 2016, the Clerk of the Court entered default. Doc. 30. Plaintiff now moves for default judgment, seeking (1) \$12,600,000 in statutory damages, (2) \$24,917 in attorney's fees and costs, (3) and a permanent injunction enjoining Defendants and their respective agents, servants, and employees from infringing Plaintiff's copyrighted works. Doc. 34-1 at 17.

## **II. Analysis.**

### **A. Whether Plaintiff is Entitled to Default Judgment.**

In deciding whether to grant default judgment, the Court may consider: (1) the merits of the claim, (2) the sufficiency of the complaint, (3) the amount of money at stake, (4) the possibility of prejudice to the plaintiff, (5) the possibility of a dispute concerning material facts, (6) whether default was due to excusable neglect, and (7) the policy favoring a decision on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). In applying the *Eitel* factors, "the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977).

The first two factors favor a default judgment. A copyright infringement claim must show that (1) the plaintiff owns a valid copyright and (2) the defendant infringed the copyright. *See Funky Films, Inc. v. Time Warner Entm't Co., L.P.*, 462 F.3d 1072, 1076 (9th Cir. 2006). Plaintiff alleges that it owns the copyright to certain erotic films and Defendants displayed 84 of these films. Doc. 17, ¶¶ 28, 58-61, 72-73. Plaintiff substantiates these allegations through declarations. Docs. 34-2, ¶¶ 8, 23; 34-3, ¶¶ 19, 24. Plaintiff has advanced a meritorious claim for copyright infringement.

The third factor disfavors entry of default judgment. Plaintiff seeks over \$12 million – a significant sum of money. Rule 55 does not limit the amount of money that can be awarded in a default judgment, and courts have entered default judgments for even greater sums. *See, e.g., State St. Bank & Trust Co. v. Inversiones Errazuriz Limitada*, 246 F. Supp. 2d 231, 233 (S.D.N.Y. 2002) (refusing to vacate default judgment for \$140 million), *aff'd*, 374 F.3d 158 (2d Cir. 2004). Nonetheless, courts are ordinarily reluctant

1 to enter a default judgment when the stakes are high.

2 The fourth factor favors entry of default judgment. Plaintiff has been injured by  
3 websites hosted in Arizona (Doc. 34-3, ¶ 26), and has brought suit in Arizona. If Plaintiff  
4 cannot recover here, it is doubtful it can recover anywhere. “Plaintiff[] will likely be  
5 without other recourse” if its motion is not granted. *PepsiCo, Inc. v. Cal. Sec. Cans*, 238  
6 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

7 The fifth factor favors entry of default judgment. Plaintiff has provided  
8 declarations indicating that Plaintiff owned copyrights to certain erotic films and  
9 Defendants infringed upon these copyrights. There is nothing to indicate that these facts  
10 can be reasonably disputed.

11 The sixth factor favors a default judgment. Although Defendants were properly  
12 served with the summons and the complaint, they made no effort whatsoever to respond  
13 to Plaintiff’s claims or participate in this proceeding. Further, Plaintiff presents evidence  
14 that Defendants stopped using Porn69 upon being served with this lawsuit, and  
15 established new websites where they continued to display Plaintiff’s works without  
16 authorization. Doc. 34-3, ¶¶ 38-39. This indicates that Defendants were aware of this  
17 lawsuit and that their failure to participate was willful, not negligent.

18 The seventh factor disfavors entry of default judgment. “Cases should be decided  
19 upon their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472. This concern  
20 is alleviated somewhat by the fact that Plaintiff presents a strong case and would likely  
21 prevail if the matter were litigated on the merits. “Moreover, Defendant[s’] failure to  
22 answer Plaintiff[’s] Complaint makes a decision on the merits impractical, if not  
23 impossible.” *Cal. Sec. Cans*, 238 F. Supp. 2d at 1177.

24 Weighing these factors, the Court concludes that entry of default judgment is  
25 appropriate. Plaintiff has advanced a meritorious claim for copyright infringement,  
26 supported by evidence. Although Plaintiff seeks a significant judgment through a  
27 disfavored procedural mechanism, Defendants were aware of the stakes in this case and  
28 willfully ignored it, making adjudication on the merits impossible.

**B. Extent of Damages.**

In granting default judgment, the Court may not simply accept a plaintiff's requested damages. Rather, "[t]here must be an evidentiary basis for the damages sought by plaintiff, and a district court may determine there is sufficient evidence either based upon evidence presented at a hearing or upon a review of detailed affidavits and documentary evidence." *Cement & Concrete Workers Dist. Council Welfare Fund v. Metro Found. Contractors Inc.*, 699 F.3d 230, 234 (2d Cir. 2012) (citations omitted); *see also Taylor Made Golf Co. v. Carsten Sports, Ltd.*, 175 F.R.D. 658, 661 (S.D. Cal.1997).

A copyright owner may elect to recover statutory damages in lieu of actual damages if the copyright in question was registered with the U.S. Copyright Office before the date of infringement. 17 U.S.C. §§ 412, 504(a). "In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000." § 504(c)(2).

Plaintiff requests the maximum statutory award for each infringement. The Court concludes that such an award is appropriate. Plaintiff has alleged, and substantiated with declarations, that all of the films at issue here were registered with the Copyright Office before the date of Defendants' infringement. Docs. 17, ¶¶ 28, 70; 34-2, ¶ 8. Plaintiff is therefore entitled to statutory damages. Plaintiff has also alleged that Defendants' infringement was willful. Doc. 17, ¶¶ 77, 83-84. This allegation is accepted as true. *See Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 702 (9th Cir. 2008) ("all factual allegations in the complaint are deemed true, including the allegation of [defendant's] willful infringement of [plaintiff's] trademarks"). Moreover, Plaintiff has provided evidence that Defendants continue to infringe their copyrights – on new websites – after service in this case. Doc. 34-3, ¶¶ 38-39. "[C]ourts have repeatedly emphasized that defendants must not be able to sneer in the face of copyright owners and copyright laws," *Int'l Korwin Corp. v. Kowalczyk*, 665 F. Supp. 652, 659 (N.D. Ill. 1987), and have awarded the maximum statutory damages in cases involving willful infringement. *See,*

1 *e.g., Perfect 10, Inc. v. Talisman Communs., Inc.*, No. CV 99-10450(RAP)(Mcx), 2000  
 2 U.S. Dist. LEXIS 4564, at \*10-11 (C.D. Cal. Mar. 27, 2000) (awarding maximum  
 3 statutory damages based on defendant’s “willful and egregious” infringement on  
 4 plaintiff’s erotic photos). The Court will therefore award Plaintiffs the maximum  
 5 statutory award per infringed work – \$150,000 for each of the 84 works infringed upon,  
 6 for a total of \$12,600,000.

## 7 **2. Attorney’s Fees.**

8 A prevailing copyright owner may recover costs and reasonable attorney’s fees if  
 9 the copyright in question was registered with the U.S. Copyright Office before the date of  
 10 the infringement. 17 U.S.C. §§ 412, 505. “An award of attorneys’ fees is appropriate  
 11 where . . . there is a finding of willful infringement.” *Warner Bros. Entm’t, Inc. v. Duhy*,  
 12 No. CV 09-5798-GHK (FMOx), 2009 U.S. Dist. LEXIS 123332, at \*8-9 (C.D. Cal. Nov.  
 13 30, 2009) (citing *Kepner-Tregoe, Inc. v. Vroom*, 186 F.3d 283, 289 (2d Cir. 1999)). The  
 14 Court has already determined that the infringement in this case was willful. Plaintiffs’  
 15 request – which reflects 51.6 hours of attorney work at a rate of \$450 per hour and certain  
 16 costs (Doc. 34-4) – is reasonable and proportionate to the needs of this case. The Court  
 17 will therefore award \$24,220 in attorney’s fees and costs.

## 18 **C. Injunctive Relief.**

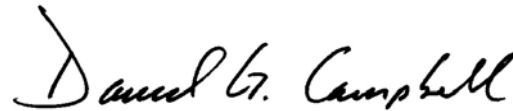
19 A court with jurisdiction over a copyright infringement action may “grant  
 20 temporary and final injunctions on such terms as it may deem reasonable to prevent or  
 21 restrain infringement of a copyright.” 17 U.S.C. § 502. In copyright cases, courts have  
 22 awarded permanent injunctive relief as part of default judgment where the defendant  
 23 continued to violate the plaintiff’s rights and the balance of equities and the public  
 24 interest favored such an injunction. *See, e.g., Sony Music Entm’t, Inc. v. Glob. Arts*  
 25 *Prods.*, 45 F. Supp. 2d 1345, 1348 (S.D. Fla. 1999). Plaintiff provides evidence that  
 26 Defendants continue to violate its copyrights, and that Defendants’ infringement has  
 27 caused it significant harm. Docs. 34-3, ¶¶ 38-39; 34-2, ¶¶ 19, 24-27. The Court  
 28 concludes that the balance of equities and the public interest in enforcement of copyright

1 laws favor an injunction. The Court will grant a permanent injunction prohibiting  
2 Defendants and their respective agents, servants, and employees from infringing upon  
3 Plaintiff's copyrighted works.

4 **IT IS ORDERED:**

- 5 1. Plaintiff's motion for default judgment (Doc. 34) is **granted**.
- 6 2. The Clerk of the Court shall **enter judgment** awarding Plaintiff  
7 \$12,600,000 in statutory damages and \$24,917 in attorney's fees and costs.
- 8 3. Defendants and their respective agents, servants, and employees are  
9 permanently enjoined from infringing on Plaintiff's copyrighted works.

10 Dated this 10th day of June, 2016.

11  
12  
13 

14 \_\_\_\_\_  
15 David G. Campbell  
16 United States District Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28